


UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED

MAR 24 2014


CLERK

FRED JOHNSON,

Petitioner,

vs.

DARIN YOUNG, Warden; and
MARTY JACKLEY, Attorney General
of the State of South Dakota,

Respondents.

CIV. 11-4032

ORDER

Petitioner Fred Johnson, an inmate at the South Dakota State Penitentiary, has applied for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. The Magistrate Judge issued a Report and Recommendation recommending that the Petition be dismissed with prejudice. The Petitioner has filed Objections to the Report and Recommendation.

After conducting an independent review of the record, the Court agrees with the Magistrate Judge. Accordingly,

IT IS ORDERED:

1. That the Petitioner's Objections (Doc. 21) are DENIED, and the Magistrate Judge's Report and Recommendation (Doc. 20) is ADOPTED.
2. That Respondents' request to dismiss the Petition (Doc. 13) is GRANTED.
3. That Petitioner's Application for Writ of Habeas Corpus (Doc. 1) is DISMISSED with prejudice.
4. That a Certificate of Appealability shall not issue except as to Claim One regarding double jeopardy, a Certificate of Appealability shall issue for the reasons stated in Justice Sabers in his dissent on that issue in *State v. Johnson*, 739 N.W. 2d 1, 13-14 (S.D. 2007).

Dated this 24th day of March, 2014.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Lawrence L. Piersol", written over a horizontal line.

Lawrence L. Piersol
United States District Judge

ATTEST:
JOSEPH HAAS, CLERK

By: 
Deputy